



THE WILDERNESS SOCIETY

Friends of Blackwater Canyon

September 10, 2008

via FACSIMILE: 703-440-1551

Bureau of Land Management
Eastern States
7450 Boston Boulevard
Springfield, VA 22153

**Re: Protest of Bureau of Land Management's Notice of Competitive Oil and Gas
Lease Sale Concerning Parcel(s) in Pendleton County, West Virginia**

Dear BLM,

The Wilderness Society (TWS) and the Friends of Blackwater (FOB) hereby protest the agency's planned offering of parcel ES-087-09/08 (WVES 55509 ACQ) at the September 25, 2008 lease sale in accordance with 43 C.F.R. § 3120.1-3.

THE PROTESTING PARTIES AND THEIR INTERESTS

The Wilderness Society and the Friends of Blackwater, and many of our individual members, have a long-standing, well-documented involvement in public lands issues, the Monongahela National Forest (MNF) and the Roaring Plains area in particular. Our

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organizations and members have provided numerous written comments on issues specific to the Roaring Plains area, including the Forest Service's inventory and evaluation of the wilderness qualities of the Roaring Plains area through the various roadless reviews and the wilderness evaluation for the 2006 Revised Land Management Plan (Forest Plan). We have also submitted comments on related matters that apply to the area, including the Monongahela NF Land Management Plan and Environmental Impact Statement (LMP/EIS). In addition, we have submitted specific proposals depicting the wilderness character of Roaring Plains and the need for its protection throughout these processes.

The Wilderness Society ("TWS"), founded in 1935, works to protect America's wilderness and wildlife and to develop a nationwide network of wild lands through public education, scientific analysis and advocacy. Our goal is to ensure that future generations will enjoy the clean air and water, wildlife, beauty and opportunities for recreation and renewal that pristine forests, rivers, deserts and mountains provide. TWS has over 800 West Virginia members and more than 310,000 members and supporters nationwide. Our members have a long-established history of involvement and interest in the protection and management of public lands in West Virginia, particularly in potential wilderness areas, and are especially concerned about the impacts of mineral leasing and development on West Virginia's wildlands. TWS was instrumental in advocating for and achieving the passage of the Wilderness Act of 1964 (and in the designation of millions of acres of wilderness across the nation since then) and has a continuing interest in ensuring the protection of wilderness quality lands under the jurisdiction of the Forest Service. TWS members use the disputed lease lands for hunting, fishing, hiking,

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backpacking, photography, wildlife viewing, and other recreational, aesthetic, and educational purposes. TWS is also a member of the West Virginia Wilderness Coalition. In addition, TWS has a long standing interest in the West Virginia northern flying squirrel, *Glaucomys sabrinus fuscus*, whose habitat occurs on these parcels. TWS has participated in the recent delisting process for the flying squirrel, filing comments at every stage of the Fish and Wildlife Service process.

Friends of Blackwater (FOB) is a not-for-profit West Virginia membership organization devoted to preserving wilderness and wildlife; protecting West Virginia's forests, parks, rivers, wild lands, unique habitats and endangered species; and fostering a West Virginia land preservation ethic. FOB has over 9,500 members and supporters. FOB has a longstanding interest in the Roaring Plains area and submitted comments urging its designation as wilderness in the Monongahela NF Forest Plan revision process. FOB also has a long-standing interest in the West Virginia northern flying squirrel, *Glaucomys sabrinus fuscus*. FOB has supported studies of the flying squirrel; staff of FOB has communicated with scientists from a number of states and Canada on the squirrel's natural history and status and collected a large library of information of this squirrel.

STATEMENT OF REASONS

This proposed lease parcel (consisting of 6 tracts) is located entirely on lands within the Roaring Plains area that the Forest Service (FS) identified and has officially recognized as having wilderness character. These lands also contain populations of and habitat for imperiled

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species, including the listed Cheat Mountain salamander and the soon to be delisted West Virginia northern flying squirrel. Exploration and development on the proposed lease would threaten significant harm to the wilderness character of these lands, the sensitive species that reside there, and other resources.

Were the Bureau of Land Management (BLM) to offer this leases for sale, the agency would violate the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* ("NEPA"), the National Forest Management Act, 16 U.S.C. § 1600 *et seq.* ("NFMA"), and the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.* ("ESA"), because the BLM and the FS have failed to, *inter alia*: (1) adequately analyze the threat of harm to the wilderness character, sensitive species, and other resources found on these lands and consider alternatives that would prevent some or all of these harms; (2) analyze and take measures to prevent harm to these resources; and (3) consult under Section 7 of the ESA with the U.S. Fish & Wildlife Service ("FWS") regarding these leases. Accordingly, BLM should withdraw these lease parcels from sale until the agency has fully complied with the aforementioned laws.

I. The BLM and FS Will Violate NEPA If They Offer This Lease For Sale.

It is the official position of the Departments of Interior and Agriculture, which positions comport with federal caselaw, that the BLM and the FS must fully analyze the impacts arising from oil and gas exploration and development on leases before leasing. *See, e.g., Southern Utah Wilderness Alliance*, 159 IBLA 220, 240-43 (2003); *Pennaco Energy, Inc. v. U.S. Dep't of the*

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Interior, 377 F.3d 1147 (10th Cir. 2004); *Conner v. Burford*, 848 F.2d 1441 (9th Cir. 1988);
Sierra Club v. Peterson, 717 F.2d 1409 (D.C. Cir. 1983).

It is our understanding that the FS (and BLM) are relying on the analysis contained in the 2006 Monongahela NF Forest Plan, Record of Decision and Final EIS for the site-specific pre-leasing NEPA analysis necessary to assess the impacts arising from oil and gas exploration and development on this lease. However, none of these documents contain the site-specific analysis necessary to satisfy NEPA's requirements, especially that for a "hard look" at the impacts.

Secondly, the 2006 MNF Forest Plan tiers to a 1992 Forest Plan amendment (Amendment #4) identifying federally owned oil and gas available for lease on the Forest. This would be inadequate under NEPA and arbitrary and capricious. The 1992 Plan Amendment did not adequately consider the impacts of oil and gas leasing, and, moreover, circumstances have changed and new information has arisen since then, necessitating further analysis. See 40 C.F.R. § 1502.9(c)(1) (supplemental EIS must be prepared when there are significant new circumstances or information).

The MNF decision to make land available to BLM for oil and gas leasing necessitates a full environmental analysis of the likely post-leasing impacts of oil and gas development before any leases are issued. The Forest Service has stated that "once a lease is issued the opportunity to deny access is irreversible for the life of the lease or the life of the producing field." February 2003 FEIS on Oil and Gas Leasing in Bridger-Teton at 3-192. By consenting to lease without surface occupancy in this case, the Forest would likely permit surface operations somewhere near each lease area, necessitating impact assessment. Oil and gas lease rights severely constrain

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the agency's options to limit or prohibit development on an existing lease to protect other natural resources.

Overall, the Forest Plan data is far too stale for use under NEPA and should have been updated. Changes in a number of resource conditions, as well as the presence of threatened, endangered and sensitive species since the 1992 analysis render this data moot. No other updated site-specific analysis was included in the Forest Plan. Given the absence of an underlying NEPA document or analysis that adequately considers the impacts of this lease on Roaring Plain's resources, the lease cannot be sold without violating NEPA. *Pennaco*, 377 F.3d 1147; *Conner*, 846 F.2d 1441, *Peterson*, 717 F.2d 1409.

A. Wilderness

The Roaring Plains proposed wilderness is of unusual and exceptional scenic value and offer outstanding remote wilderness experiences for many people. The area offers many opportunities for solitude of unusually good quality. Area trails have been well designed to provide loops within the area as well as connecting to Dolly Sods and even further north to Canaan Valley. Deer, turkey, bear and other native faunal populations are abundant and already provide outstanding hunting opportunities. On all sides of the Plains, there are many rocky outcrops and other areas affording spectacular and unparalleled views of the surrounding mountainous countryside. To date, at least forty-two viewpoints have been located and only three of them are on designated trails. Not only can many cliff areas be found on top of the Plains, but also at least seven known high elevation wetlands (sphagnum bogs), the highest in the state, are present and are home to rare plants and animals such as the Snowshoe Hare, Bog

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Lemming, Bobcat and fisher. These bugs serve to regulate stream flow at the headwaters for both sides of the eastern continental divide.

The lease area has since the 1992 Forest Plan Amendment and the 2006 Forest Plan been proposed for Wilderness designation in a bill before Congress. The lack of current NEPA analysis means impacts to the proposed Roaring Plains West Wilderness area have not been analyzed or disclosed. Finally, while the Mineral Leasing Act requires the BLM to hold regular lease sales, it does not (as the agency has acknowledged) require the sale of any particular parcels and the BLM and FS retain the discretion to determine whether a particular parcel is appropriate for sale. In this case, given the pending legislation and the FS's determination of the suitability of these lands for wilderness and the Secretary's submission of the proposed legislative designation, the agencies should have exercised their discretion to withhold this parcel.

B. Wildlife

In failing to prepare any pre-leasing analysis under NEPA, the BLM and FS have failed to consider the adverse impacts oil and gas development will likely have on Roaring Plain's wildlife populations and habitat. The area has long been known as habitat for the West Virginia northern flying squirrel, *Glaucomys sabrinus fuscus*. It also likely contains the listed Cheat Mountain salamander. The failure to prepare pre-leasing analysis under NEPA has left impacts to these species unanalyzed and undisclosed. This must be corrected before a sale of this lease proceeds.

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II. The FS and BLM Will Violate The ESA If They Offer This Lease For Sale.

The FS and BLM would also violate the ESA were they to offer this lease for sale. The proper conclusion if listed species exist in the area is that leasing "may affect" those listed species, which triggers the requirement that the BLM and / or FS engage in consultation with Fish and Wildlife Service (FWS). The BLM and FS, as far as TWS and FOB have been able to determine, has not consulted on this lease sale. This violates the ESA.

III. The BLM and FS Will Violate NFMA if They Offer This Lease For Sale.

The BLM and FS would also violate the NFMA were they to offer these leases for sale. Under the NFMA, decisions implementing a Land Management Plan ("LMP") must be consistent with the plan. 16 U.S.C. § 1604(i). This parcel was previously offered for sale at the April 24, 2008 BLM lease sale. At that time a number of lease stipulations were included in the sale proposal which have not been included in this sale proposal. Lease stipulations implement Forest Plan standards. Failure to include them here means leasing activities would proceed that were not consistent with the Forest Plan. Missing lease stipulations that should have been addressed in the current lease sale include stipulations for the endangered snowshoe hare, the endangered Cheat Mountain salamander, threatened and endangered plant species, the effects on coldwater fisheries, the presence and effect on mediterranean soils, and the effects on wetlands.

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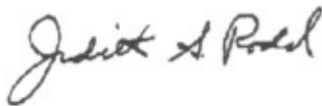
REQUEST FOR RELIEF

TWS and FOB requests that BLM withdraw the protested parcel from the September 2008 Competitive Oil and Gas Lease Sale until such time as the BLM and FS have complied with NEPA, NFMA, and the ESA.

This protest is brought by The Wilderness Society and Friends of Blackwater.



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